

REMARKS

In view of the following representations, reconsideration and allowance of the above-identified application is respectfully requested.

Claims 1-4, 15, 17-20 and 23-26 are pending in the present application.

Applicants wish to thank the Examiner for withdrawing the rejection of the claims under 35 U.S.C. § 112, ¶2, and for his time during a telephone call conducted on February 5, 2009.

During the February 5, 2009 telephone interview, the Examiner agreed to reconsider the rejection of claims 1-4, 15, 17-20 and 23-26 based upon provisional non-statutory obviousness-type double patenting in view of claims 1-7, 9-11, 16-23, 25, 26, 33, 37, and 38 of co-pending United States Patent Application No. 11/094,493.

The provisional double patenting rejection is the only rejection remaining in the present application. United States Patent Application No. 11/094,493 is currently pending and has not been allowed.

The present application was filed on February 12, 2004. United States Patent Application No. 11/094,493 was filed on March 20, 2005. Clearly, the present application was filed before United States Patent Application No. 11/094,493.

In light of these facts, Applicants respectfully request the Examiner reconsider and withdraw the provisional double patenting rejection of the present application in accordance with the provisions of MPEP § 804(I)(B)(1). MPEP § 804(I)(B)(1) reads in relevant part as follows:

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier filed application to issue as a patent without a terminal disclaimer.

Application No.: 10/777,542
Examiner: Weddington, Kevin E.

Based upon the foregoing amendments and representations, Applicants respectfully submit that the provisional rejection of the claims in the above-identified application have been overcome and should be withdrawn. Early and favorable action is earnestly solicited.

It is believed that no fee is required for submission of this response because it is being filed before the three month deadline of February 28, 2009.

If a fee is due, the Commissioner is authorized to charge our deposit account, Account No. 08-1540.

Respectfully submitted,

/Nicholas P. Chiara/

Nicholas P. Chiara
Registration No: 52,737

MAILING ADDRESS:
HEDMAN & COSTIGAN, P.C.
1185 Avenue of the Americas
New York, NY 10036-2601
(212) 302-8989